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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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09/129,675

08/05/1998

ELIYAHOU HARARI

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04/04/2006

PARSONS HSUE & DE RUNTZ LLP  
595 MARKET STREET  
SUITE 1900  
SAN FRANCISCO, CA 94105

EXAMINER

TRAN, ANDREW Q

ART UNIT

PAPER NUMBER

2824

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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09/129,675 08/05/1998

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| EXAMINER |
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| ART UNIT | PAPER |
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04032006

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

See attached communication.

Andrew Q Tran  
Primary Examiner  
Art Unit: 2824



### ***Interference***

#### **37 CFR § 41.202. Suggesting an interference**

(a) Applicant. An applicant, including a reissue applicant, may suggest an interference with another application or a patent. The suggestion must:

- (1) Provide sufficient information to identify the application or patent with which the applicant seeks an interference,
- (2) Identify all claims the applicant believes interfere, propose one or more counts, and show how the claims correspond to one or more counts,
- (3) For each count, provide a claim chart comparing at least one claim of each party corresponding to the count and show why the claims interfere within the meaning of § 41.203(a),
- (4) Explain in detail why the applicant will prevail on priority,
- (5) If a claim has been added or amended to provoke an interference, provide a claim chart showing the written description for each claim in the applicant's specification, and
- (6) For each constructive reduction to practice for which the applicant wishes to be accorded benefit, provide a chart showing where the disclosure provides a constructive reduction to practice within the scope of the interfering subject matter.

(b) Patentee. A patentee cannot suggest an interference under this section but may, to the extent permitted under § 1.99 and § 1.291 of this title, alert the examiner of an application claiming interfering subject matter to the possibility of an interference.

(c) Examiner. An examiner may require an applicant to add a claim to provoke an interference. Failure to satisfy the requirement within a period (not less than one month) the examiner sets will operate as a concession of priority for the subject matter of the claim. If the interference would be with a patent, the applicant must also comply with paragraphs (a)(2) through (a)(6) of this section. The claim the examiner proposes to have added must, apart from the question of priority under 35 U.S.C. 102 (g):



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- (1) Be patentable to the applicant, and
- (2) Be drawn to patentable subject matter claimed by another applicant or patentee.

(d) Requirement to show priority under 35 U.S.C. 102(g).

- (1) When an applicant has an earliest constructive reduction to practice that is later than the apparent earliest constructive reduction to practice for a patent or published application claiming interfering subject matter, the applicant must show why it would prevail on priority.
- (2) If an applicant fails to show priority under paragraph (d)(1) of this section, an administrative patent judge may nevertheless declare an interference to place the applicant under an order to show cause why judgment should not be entered against the applicant on priority. New evidence in support of priority will not be admitted except on a showing of good cause. The Board may authorize the filing of motions to redefine the interfering subject matter or to change the benefit accorded to the parties.

(e) Sufficiency of showing.

- (1) A showing of priority under this section is not sufficient unless it would, if unrebutted, support a determination of priority in favor of the party making the showing.
- (2) When testimony or production necessary to show priority is not available without authorization under § 41.150(c) or § 41.156(a), the showing shall include:
  - (i) Any necessary interrogatory, request for admission, request for production, or deposition request, and
  - (ii) A detailed proffer of what the response to the interrogatory or request would be expected to be and an explanation of the relevance of the response to the question of priority.

Applicant has suggested an interference pursuant to 37 CFR 41.202(a) in a



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communication filed August 05, 1998.


Applicant failed to provide a detailed explanation as to why applicant will prevail on priority. See 37 CFR 41.202(a)(4), (a)(6), (d) and MPEP § 2304.02(c).

Applicant is given ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing date of this communication to correct the deficiency(ies). THE PROVISIONS OF 37 CFR 1.136 DO NOT APPLY TO THE TIME SPECIFIED IN THIS ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Q. Tran whose telephone number is (571) 272-1885. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard T. Elms can be reached on (571) 272-1869. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Andrew Q Tran  
Primary Examiner  
Art Unit 2824

at



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April 03, 2006